



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 139 of 1993**

IN THE MATTER OF THE ESTATE OF JOSEPH NJITHI WAHEIRE – DECEASED

JEDIDAH WAIRIMU NJITHI.....PETITIONER

MICHAEL WAHEIRE NJITHI

VERSUS

SAMUEL WAHEIRE NJITHI

FAITH WANJIKU WAHEIRE

GLADYS WANJIKU WAHEIRE.....OBJECTORS

IRENE THANJI WAHEIRE

LUCY NJOKI WAHEIRE

PATRICIAH WANGUI NJITHI

CHARLES MUCHIRI NJITHI.....INTERESTED PARTIES

ROBERT KIMANI NJITHI

JUDGMENT

This judgment is the offshoot of the Summons for Confirmation of Grant dated 2nd July 2008 and the Protest filed to oppose the application. This Court gave directions for the dispute to be determined by oral evidence.

The Protestor's case is supported by the evidence of Gladys Wanjiku Waheire. (P. W. 1). She told this Court that she is entitled to inherit a portion of the parcel of land known as **L.R. NO. AGUTHI/GATITU/436** and the subsequent sub-divisions. According to P. W. 1 the aforesaid land was originally owned by Samuel Waheire Njithi, deceased, before her brother Joseph Njithi Waheire, deceased, transferred it to himself. She said she is claiming L.R. NO. **AGUTHI/GATITU/2076**, a sub-division of **L.R. NO. AGUTHI/GATITU/436** because her father the late Samuel Waheire Njithi had given the land to her. She was of the view that the two sub-divisions should be shared equally amongst the children of the late Samuel W. Njithi. She claimed that a trust in her favour was created when her late father transferred the land to the Petitioner.

The Petitioner's case was supported by the evidence of two witnesses. **ROBERT KIMANI NJITHI** (D. W. 1), told this court that Gladys Wanjiku (P.W. 1) is not entitled to inherit his father's land. D. W. 1 gave the chronology of steps taken to have **L. R. NO. AGUTHI/GATITU/436** sub-divided. D. W. 1 produced documents to show that **L.R. NO. AGUTHI/GATITU/436** was sub-divided into two portions namely:

- (i) **AGUTHI/GATITU/1702** and

(ii) **AGUTHI/GATITU/1703.**

David Kimani was given **L.R. NO. AGUTHI/GATITU/1702** whereas Joseph Waheire Njithi was given **L.R. NO. AGUTHI/GATITU/1703**. The two portions were originally in the names of Samuel Waheire Njithi before transferring them to his sons David Kimani Waheire and Joseph Njithi, deceased on 24th August 1982. The late Joseph Njithi caused **L.R. NO. AGUTHI/GATITU/1703** to be sub-divided into three portions namely:

L.R. NO. AGUTHI/GATITU/2076,
AGUTHI/GATITU/2077 and
AGUTHI/GATITU/1751.

D. W. 1 claimed he cultivates both **AGUTHI/GATITU/2076** and **2077**. D. W. 1 said none of the Protestors have occupied the aforesaid parcels. D. W. 1 admitted that his grandfather Samuel Waheire Njithi, deceased, had initially filed objection proceedings in respect of these succession proceedings, but he died before the objection could be heard. It is alleged that the late Joseph Njithi had fraudulently sub-divided his land without his consent. **JEDIDA WAIRIMU NJITHI** (D. W. 2) told this Court that she was not aware that the late Samuel Njithi had complained over the sub-division of L.R. NO. AGUTHI/GATITU/1703 undertaken by her late husband Joseph Njithi. D. W. 2 produced documents showing that the late Joseph Njithi purchased

- (i) **L.R. NO. NARUMORU/BLOCK 2/MURIRU/1150.**
- (ii) **L.R. NO. NARUMORU/BLOCK 2/MURIRU/1151.**
- (iii) **L.R. NO. NARUMORU/BLOCK 2/MURIRU/1152.**

D. W. 2 alleged that the late Joseph Njithi had given money to the late Samuel Njithi to purchase land in form of shares from land buying companies.

I have considered the evidence tendered by both sides plus their written submissions. It is not in dispute that the parcel of land known as **L.R. NO. AGUTHI/GATITU/436** was originally registered in the name of Samuel Waheire Njithi, deceased. Samuel Waheire Njithi caused the aforesaid parcel to be sub-divided into two parcels namely **L.R. NO. AGUTHI/GATITU/1702** and **AGUTHI/GATITU/1703** and had them transferred to Davidson Kimani Njithi and Joseph Njithi Waheire, deceased respectively. It would appear, Joseph Njithi Waheire sub-divided **L. R. NO. AGUTHI/GATITU/1703** into two portions **L. R. NO. 2076** and **2077**. When Joseph Njithi Waheire died, Samuel Waheire Njithi, deceased, contended that Joseph Waheire had sub-divided the parcel without his knowledge and consent. That contention was not determined because Samuel Njithi passed on. Gladys Waheire was substituted for Samuel Waheire Njithi, deceased. She is before this Court seeking to have the following parcels of land to be shared equally:

- (i) **L.R. NO. AGUTHI/GATITU/2076.**
- (ii) **L. R. NO. AGUTHI/GATITU/2077.**
- (iii) **NARUMORU/BLOCK 2/1150.**
- (iv) **NARUMORU/BLOCK/1151.**

It is the Protestor's submission that had the late Samuel Waheire Njithi lived to-date he would have convinced the Court that he was entitled to a portion of the land. That is the claim the Protestor is now pursuing. It is said that the deceased took advantage of the advanced age of the late Samuel Waheire Njithi and fraudulently sub-divided his properties. The Petitioner on her part is of the view that the Protest as relating to **L. R. NO. NARUMORU/BLOCK 2 (MURIRU)/1150** and **1151** should be dismissed because no evidence was laid to prove the same. It is said the Protestor has no *locus standi* to claim parcels NO. L. R. NO. **AGUTHI/GATITU/2076** and **2077** because none has taken up Letters of Administration. Having critically examined the evidence and the submissions, I am persuaded by the evidence and the submissions of the Petitioner. It is true that the Protestor(s) did not tender any evidence to prove their claim over **L. R. NO. NARUMORU/BLOCK 2**

(MURIRU)/1150 and **1151**. A careful consideration of the evidence relating to the parcels of land known as L. R. NO. AGUTHI/GATITU/2076 and 2077 will reveal that the Protestor's claim is in furtherance of a claim by the late Samuel Waheire Njithi based on trust. It is upon establishing the aforesaid claim that the Protestors can lodge their claim. It is obvious that to enable one to pursue such a claim, a party must first succeed the deceased by obtaining Letters of Administration. That did not happen in this case. I am convinced the Protestor(s) in the circumstances have no *locus standi*.

In the end and on the basis of the above reasons, the Protest is dismissed and the grant is confirmed as prayed. The dispute involves members of the same family. No costs is awarded.

Dated and delivered at Nyeri this 18th day of June 2010.

J. K. SERGON

JUDGE

In open court in the presence of Miss Ngatunyi holding brief Mwangi for Protestor and Miss Mwangi holding brief Muhoho for I.P. and Mugo holding brief for Karweru for Petitioners.